App. F. IX-4

1930.31 (Law)

File No. 134 - 3

Serial Nos. 1 & 2.

Previous References

L. R. 273.30-1, 3 & 4
" 373.29-142.

Later References

(14)

General and Revenue Secretariat.

Serial Nos. Two

Part B for July 1931.

SUBJECT.

Notice under Sec. 80 C.P.C. from Mr. K. N. Srinivasa Advocate, Bangalore on behalf of Mr. Lakshmipathia

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2) To K. N. Srinivasan Esqr. B.A., LLB
Advocate, Bangalore.

No. P. 422 & 17.7.31

States that Govt. cannot revise orders already passed in the matter.

Mr. Abdul Aziz
& 12.8.31.

G. R. S. APP F. III—1] 1930.

GENERAL AND REVENUE SECRETARIAT.

(Law)

NOTES.

File No. 134

FILE HEADING.

Notice under Sec 80 C. P.C

FROM Mr. K. V. Sreenivasan. Advocate Bangalore

No. Dated 16.4.31 Received 21.4.31

Diary No. 4964	Enclos.	Spare copies	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Gives notice on behalf of Lakshminarasimhaya threatening a Suit for Cancellation of the G.O. levying a royalty of Rs 1250/- and for stopping the Coercive measures taken by the Rev. authorities in executing the said G.O.

NOTES AND ORDERS.

Lakshminarasimhaya the owner of certain land (town garden + dry) is a native of Doddamaralli. Part of the land in his Sur. no. was kharab As long back as in the year 1916 this kharab land was altered, and is said to have been brought under cultivation. But

NOTES—First Sheet.

WD 01683—GPB—5,000—3-5-29

App. F. III—2]

General and Revenue Secretariat | Laws File No. 134 of 1930.

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It has been proved by the Rev Authorities that the land in question was used for manufacturing bricks. It was estimated that since 1916 nearly 50 lakhs of bricks were manufactured by the owner, for which the Amildar of the taluk recommended a royalty of Rs 1000, and a fine of Rs 10000. D.C. in perusing the records ordered a royalty of Rs 750 and a fine of Rs 1000/-. On appeal the R.C. enhanced the payment of royalty to Rs 1250/-. Calculating @ the rate of Rs 25 per lakh of bricks, and Cancelled the order regarding the levy of fine, on the ground that the land is not materially damaged for Cultivation. 2nd Appeal being filed before the Govt., Govt did not like to interfere with the findings of the lower Court, and accordingly an endorsement was issued rejecting the appeal

2. It has been argued through and through on behalf of the appellant, that this Case falls directly under the provisions of Sec 25 of the Land Revenue Rules. But this is a Case in which the owner has benefited himself financially by manufacturing bricks for trade

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

3) 3

4297/2

4964

General and Revenue Secretariat

Law — File No. 134 of 1930

and not for domestic purposes. He has brought out this fact in his judgment showing ample evidence in the matter thus we Govt are justified in rejecting the appeal. Hence the threatened Suit may be awaited.

TSD
25/4

3. Under what provision of law is the royalty levied? Is it 'assessment' under Sec 46 cl (b) of the L.R. Code read with rules 28 & 29 of the Land Revenue Rules? If so is not Govt's Sanction previous to altering the assessment necessary under rule 29 of the L.R. Rules? Was such sanction obtained in this case? For favour of opinion.

Mr T

Rev Branch)

MMP
25/4/31

Subd

4. Attention is invited to the Under Secretary's note in paras 5 to 8 of the notes in L.R. file 373-29. The imposition of altered assessment does not seem to have been contemplated by the R.C. in his order dated 25th Oct 1929, which was confirmed by G.O. dated 12th/13th Feb 1930. Hence the Govt Sanction in the matter under rule 29 of the L.R. Rules seems to have been obtained.

flag N.

25/4/31

General and Revenue Secretariat — Law — File No. 134 of 1930.

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5. Royalty was levied in this case under Rule 18 and Appx. III of the Land Revenue Rules. It is a levy made in virtue of the powers vested in them under Sec. 38 of L. R. Code. It is not an assessment, which is a levy made under Sections 106 and 111 or Section 50 of the Land Revenue. Permanent assessment is fixed by a Survey Officer under Sec. 111 and is leviable after obtaining sanction of Govt. to the levy. (Vide Sec. 112 of the L. R. Code). Temporary assessment is fixed on unassessed lands by the Dy. Comm. under Sec. 50 of the L. R. Code

The present case seems to be governed by the latter part of Rule 50 of the Land Revenue Rules. It is stated therein that in all other cases it is upon the wish to remove the restrictions that permission or levy royalty. The rate of royalty are given in Appendix A. Rule 28 does not apply to the present case as in this case only permission is given for the removal of the restrictions for bonafide domestic or agricultural purposes or not for Commercial purposes.

Chief Sec'y) 29/4/31

Chapter III of the

59

Sec 4 (2) (b) & Rule 50 of Rules

NOTE—Contn. Sheet.

WD 02553—GPB—50,000—8 7 30

Land Revenue Rules deals with Disposal of unoccupied Government lands. Rules 18 or 20 of that Chapter ~~deal~~ empower Revenue Officer to recover royalty in respect of earth, stone, etc under certain Conditions. Under these rules royalty is to be levied only when earth, stone etc are removed from unoccupied Government lands. Excepting the said two rules there is no other rule or section under which royalty in respect of earth etc can be levied. In the present case earth has been removed or bricks manufactured from an occupied land Hence Rules 18 or 20 are inapplicable to the present case ~~or~~ for the levy of royalty in ~~the present case~~ does not seem to be authorised. The Revenue Court has also in his order that the latter part of Rule 28 of Land Revenue Rules is applicable to the present case. That Rule merely says that the occupant of a land can remove earth, stone etc for his own bonafide domestic or Agricultural purposes without previous permission or without payment of fees. It does not say that the penalty should be of a mere removal for Commercial purposes.

The Contention of the pleader all along has been that as for the earth removed

for the better cultivation of the land or the land is used for some purpose within the provisions of Rule 28 of L. R. Rules. That rule empowers occupant of the land to make any use of the same so long as he does not materially injure it for cultivation. The latter portion of the said Rule empowers the occupant to remove earth, stone, etc for his bonafide domestic or agricultural purposes only. But in the present case earth has been used for commercial purposes or bricks have been manufactured from it. So Rule 28 of Land Revenue Rules does not help the party.

In the above the key of regularity in the present case is unauthorised. So the next point for consideration is under what other Section or rule the unauthorised act of the party can be punished. Under clause 3 of Sec 63 of L.R.C. when any land is appropriated to any purpose unconnected with agriculture it shall be lawful for the Deputy Commr to require the payment of a fine in addition to any new assessment which may be levied under Sec 48. Now as the party comes under Sec 63 or not Sec 64 of L.R.C. as the party does not seem to have received any reply from the Revenue authorities within 3 days regarding his application for the removal

NOTE—Contn. Sheet.

WD 02553—GPB—50,000—8 7 30

4764/33 P 4297

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or the Contractor of brick kilns
of earth. According to Schedule A of Rule 58
of the L. R. Rules the rate of fine per acre
on the area
levied is not less than Rs 500 or not more
than Rs 1000. With the sanction of previous
the said Commissioner can be exempted under
Sec 48 of L.A.C read with Rule 298 L.R. Rules
Now is the other point that requires
Consideration. The Court says that with the
primitive object of making the kharab
lands of the Survey number fit for
Agricultural purposes he lowered the
level of the portion and sold the
earth thus removed to Contractors
for making bricks. In the absence of
the record it is not possible to say if
his statement is true. But the fact
that the manufacture of bricks
is going on in the Survey number
for the last nearly 15 years as the
on the date of application i.e. 3/1/1916 was to build brick kiln
too on a very large scale it is
hard to believe his statement.
Chief Sec'y) 2. 7/5/31

CHIEF SECRETARY
7 MAY 1931

I generally agree in the
views expressed above. The Law dept
may examine the case further
KLL
8/5/31

B. of Rev). 2. 8/5/31

General and Revenue Secretariat | File No. of 193

Serial No.

Mr S. Lakshminarasimhaiya, Khatedar of S. No. 21 in Arekampanahalli village near Bangalore city, has used the kharab portion of the land measuring about 1 acre & 13 guntas from the year 1916 onwards for the manufacture of bricks. The Rev: authorities took action for this unauthorised use of an agricultural land and finally the Rev Comr ordered the levy of a royalty of Rs 1250/- but refused to impose a fine under sec 63 of the Land Rev Code: on the ground that the use to which the khatedar had put the land, had not rendered it in any way unfit for cultivation. On the Revision this order of the Rev Comr was confirmed by Govt in R 5612/L.R. 373-29-2 dated 13th Feb 1930. On the Rev: authorities taking coercive measures to recover the royalty, the Khatedar has issued a notice under sec 80 that unless the orders is rescinded, he is going to file a suit against Govt, for cancellation of the order.

Regulation VII of 1923 does not contemplate such suits and it is doubtful if a suit for mere declaration

Note—Contn. Sheet

WD 02328—GPB—10,000—22-4-30

and injunction could lie against Govt. Anyway if the amount is recovered by Govt, the party can certainly file a suit for refund of the amount if he can show that he is not legally liable to pay the amount. The cause of action for such a suit has not yet arisen and a notice under sec 80 C.P.C before the accrual of such cause of action has been held to be invalid.

It may however be undesirable to proceed on with the execution of the Govt order, if on examination it is found to give rise to a cause of action against Govt on which the party affected could maintain a suit in the Civil courts. The question therefore of the legality of the levy of a royalty in such cases has to be examined. A doubt was felt in the matter & the opinion of the Rev Branch has therefore been taken

It is clear from the learned note of Mr. Chinnaraj Urs (Vide portion marked A & B in red pencil), with which the Chief Secy also agrees that the

- Sec 22) of R. Code does not prevent such suits from being filed.

DRP 4/5-

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Serial No.

levy of royalty in this case is unauthorised, as it does not fall under either rules 18 or 20 of the L.R. Rules, which are the only provisions enabling Govt to levy a royalty. It is suggested that the levy may be looked upon as a fine under sec 63 of the L.R. Code read with rule 58 of the L.R. Rules, but it is hard to support this in face of the clear orders of the Rev Comr, confirmed in all respects by Govt. The Rev Comr says "But I do not see any justification in imposing a fine as it is not proved that the land has been rendered unfit for cultivation."

Sec. 63 enables the levy of a fine in all cases in which an agricultural land has been used for non-agricultural purposes, as in this case, irrespective of the fact whether such use has or has not rendered the land unfit for cultivation. This was therefore a case in which the Rev Comr ought to have levied a fine and not a royalty.

The best course now appears to be for Govt to review the previous orders and to direct the imposition of a fine under sec 63 instead of a royalty, in which case the Coercive steps now being taken by the

NOTE—Contn. Sheet.

WD 02553—G PB—50,000—8 7 30

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4964

Rev. authorities may be stayed.

If this view is acceptable, further action has to be taken in the Rev. Branch

Legal Rr

DMP 12/5

2nd Member)

I agree with the above view

D. M. 16/5

DMP 18/5

Please cancel Rev. Com. U.O. & ltr

19-5-31

D. M. 19/5

Chief Secy with compts

DMP 19/5

20/5

19482

Forwarded, with compts, to the Revenue Commissioner in Mysore for favour of opinion

C459

MAY 21 1931

H. Ramachandra Rao

Sec. to Govt

20-5-31

21/5/31

Rev. No. R. 132/30-31

D. 21-5-31

Returned with compliments.

The party's contention is that he removed soil from the land to make it fit for cultivation and that he is not liable to pay any royalty. But this removal of the soil has gone on for a long period and it has been found that

General and Revenue Secretariat | File No. of 193

19103

Serial No.

it was used for making bricks for sale. Obviously therefore the contention of the party is not tenable.

This case can no doubt be brought under Section 63 of the Land Revenue Code as the land has been put to purposes other than agriculture. But the more appropriate provision of Law under which it should be dealt with appears to be Rule 28 of Land Revenue Rules as in this case the occupant has removed soil and used the same for a commercial purpose, which he cannot do without paying a fee. In the absence of any prescribed rates of fees for such user, the rates in Appendix M to Land Revenue Rules have been adopted.

Therefore the levy made by this office under Rule 28 of Land Revenue Rules and confirmed by Government is justifiable. It can also be held justifiable as an alternative under Section 63. In my opinion there is no reason why the orders already passed by Government should be reviewed by them, as suggested by the Law Department. Such an action may tend to weaken our case.

The enclosures accompany.

Revenue Commissioner.

12-6-1931.

OFFICE OF THE SECOND MEMBER OF COUNCIL 16 JUNE 1931 No. 10868

NOTE—Contn. Sheet.

WD 02553—GPB—50,000—8·7 30

/32

4964/P.J 4967

File No. of 193 | General and Revenue Secretariat

The file may now be returned to Protection Branch for receipt of orders -

14/7/31

Protection Br

15/7/31

Dft to Mr. Srinivasan is put up for sgd

ISD 16/7

Dft reply to the notice issued by the Advocate, Mr. K.V. Srinivasan is put up for orders.

(Chief Secy)

MP 16/7

CHIEF SECRETARY'S 16 JULY 1931

MM 16/7

Issue. MP 17.7.31.

To

K. V. Srinivasan Esqr., Advocate

No. P. 422 dated 17.7.31 informing that Govt Cannot reconsider the orders already passed in the matter

Copy to RC in Mysore, B'lore.

To

Rev. Br. with Compts for perusal and return

ISD 20/7

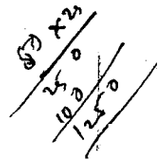
PB

MP 20/7

G. R. S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]



SECRET.

B[illegible] routine notes be written on small slips
the notes must b cipoed, or slips pasted on
this form.

To

Rev. Dr for favour of
putting up Connected refs.

TSD
22/4

To. P&O Branch.

The connected refs are put up

23/4

10

Appendix F G–1]

SUBJECT.....

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Section Law

File No. B4-3A.

Serial No. 2

Diary No. of letter replied to.....

No. P 422

To ~~Mr.~~ K. N. Srinivasan, Esq, M.A., L.L.B.

Advocate, Bangalore

General and Revenue Secretariat

( )

the *193* .

Sir,

Date of issue 17/2/31.

With reference to your notice dated 16th April 1931 issued ~~under sec 80 C.P.C.~~ on behalf your client.

Mr. S. Lakshminarasimhaiya residing at Doddamavalli, Bangalore city.

Signed by

regarding the recovery of Rs 125 o/s ~~re~~ from him on account of bricks made & ~~leveying the royalty of~~ and sold in S. No 21 of Agrakempanahalli, Bangalore Talk, I am directed to state that Govt ~~can take no action in the matter~~. your client has no cause of action against Govt. Govt cannot reconsider the order already passed in the matter

I have etc

Ch. Secy

List of enclosures.....

Copied by.....

Examined by.....

TSD 16/7 MM 16/7

Copy to the R.C. will Complt for information

MM 16/7